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Image

1614

PTO/SB/21 (02-04)

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/039,935	
	Filing Date	November 1, 2001	
	First Named Inventor	R. Eric Montgomery	
	Art Unit	1614	
	Examiner Name	Donna J. Jagoe	
Total Number of Pages in This Submission	21	Attorney Docket Number	3564

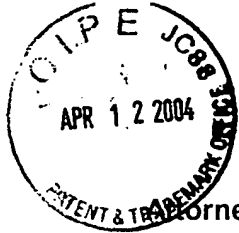
ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Technology Center (TC)
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input checked="" type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
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<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	
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<input type="checkbox"/> Certified Copy of Priority Document(s)	Remarks	
<input type="checkbox"/> Response to Missing Parts/Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Timothy J. Haller of Niro, Scavone, Haller & Niro 181 W. Madison Suite 4600 Chicago, IL 60602
Signature	
Date	April 6, 2004

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.	
Typed or printed name	Hannah Martin
Signature	
Date	April 6, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Attorney Docket No. 3564

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: R. Eric Montgomery
Application No.: 10/039,935 Group No.: 1614
Filed: November 1, 2001 Examiner: Donna J. Jagoe
For: TOOTH BLEACHING COMPOSITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REVOCATION OF POWER OF ATTORNEY WITH
NEW POWER OF ATTORNEY AND
CHANGE OF CORRESPONDENCE ADDRESS**

BriteSmile Development, Inc., the owner of the above patent application by assignment, hereby revokes all previous powers of attorney in the above application and appoints:

NIRO, SCAVONE, HALLER & NIRO a professional corporation located at 181 West Madison Street, Suite 4600, Chicago, Illinois 60602 (which has associated with it: Timothy J. Haller, Registration No. 26,692; Arthur A. Gasey, Registration No. 35,150; Robert P. Greenspoon, Registration No. 40,004; attorneys admitted to practice before the Supreme Court of the State of Illinois) and David M. Quinlan, Registration No. 26,641 (an attorney admitted to practice before the Supreme Court of the State of New Jersey).

CHAIN OF TITLE

1. On April 8, 1997 an assignment from **R. Eric Montgomery to R. Eric Montgomery and Idex Dental Sciences, Inc.** was recorded with the U.S. Patent Office under Reel/Frame 008451/0550.
2. On March 11, 2003 an assignment from **R. Eric Montgomery and Idex Dental Sciences, Inc., to Oraceutical Innovative Properties LLC** was recorded with the U.S. Patent Office under Reel/Frame 013821/0582.
3. On September 4, 2003 an assignment from **Oraceutical Innovative Properties LLC to Oraceutical Aquisition LLC** was submitted to the U.S. Patent Office for recordation. A copy of the Assignment is attached.
4. **Oraceutical Aquisition LLC** merged with **BriteSmile Development, Inc.** The Certificate of Merger was submitted to the U.S. Patent Office for recordation on January 21, 2004. A copy of the Certificate of Merger is attached.

Please direct all future correspondence for this application
using Attorney's Docket No. 3564 to:

Timothy J. Haller
NIRO, SCAVONE, HALLER & NIRO
181 West Madison Street Suite 4600
Chicago, Illinois 60602

Please direct all telephone calls to:
David M. Quinlan
(609) 921-8660

Date: 3/29/04



Signature of Assignee of Record
Nhat Ngo, Chief Operating Officer
Britesmile Development, Inc.

ASSIGNMENT

(OAC Patent Assignment)

This Assignment ("Assignment") is made and entered into as of July 1, 2003, by R. Eric Montgomery, Oraceutical Innovative Properties, LLC, a Delaware limited liability company, and Oraceutical LLC, a Delaware limited liability company (collectively "Assignor"), in favor of Oraceutical Acquisition LLC, a Delaware limited liability company ("Buyer").

RECITALS AND REPRESENTATIONS:

- A. Assignor, Buyer and certain other persons are parties to that certain Asset Purchase Agreement (the "Purchase Agreement") of even date.
- B. Assignor owns or may assert a claim to all or to a portion of the right, title, and interest in and to the following (collectively the "Patents"):
- (a) all Letters Patent of the United States or any other country, and all applications for Letters Patent of the United States or any other country, which applications and Letters Patents are owned or controlled by Assignor as described in Exhibit A attached hereto and disclose and/or claim part or all of the Technology (as defined below) and the Related Technology (as defined below) together with all Letters Patent which subsequently issue from such patent applications;
 - (b) all re-issues, re-examinations, continuations, continuations-in-part, divisionals, renewals, substitutes or extensions thereof and any foreign counterpart applications including the right to claim international priority;
 - (c) the patentable inventions of Assignor disclosed or claimed therein, including exclusivity respecting the right to make, have made, use, import offer for sale and/or sell (or license or otherwise transfer or dispose of) such inventions;
 - (d) the right (but not the obligation) to prosecute such applications; and
 - (e) the right to enforce (but not the obligation, except as otherwise provided in the Assignment) such Letters Patent and applications, and collect damages, if any, for infringement by any third parties which infringement occurred prior to or after the date hereof.
- C. Pursuant to the terms of the Purchase Agreement, Assignor desires to transfer all of its claims, right, title and interest to any or all of the Patents to Buyer, and Buyer desires to secure same.

1. Grant. In consideration of \$10.00 and other good and valuable consideration paid to Assignor by Buyer, the receipt and sufficiency of which Assignor hereby acknowledges, Assignor hereby assigns to Buyer its entire claim, right, title, and interest in the Patents and in any portion thereof.

2. Definitions.

2.1 "Affiliates" shall mean with respect to a person or entity any other person or entity that directly or indirectly controls, is controlled by or is under common control with such person or entity.

2.2 "BSML Group" shall mean BriteSmile, Inc., a Utah corporation, and BriteSmile Development, Inc., a Delaware corporation.

2.3 "HOC" refers to human oral care and shall mean, specifically, compositions, treatments (including the application of light and/or heat), equipment, materials and any combination thereof, applied to any human oral cavity surface or tissue and intended for the diagnosis, mitigation, cure, treatment and/or prevention of an aesthetic or disease condition of the human oral cavity or tissue, including all and any other beneficial or cosmetic effects to the subject that such application may confer.

2.4 "Knowledge", "Know" or "Known" shall mean the actual knowledge of R. Eric Montgomery as of the date hereof.

2.5 "Liens" shall mean any and all liens, security interests, licenses, encumbrances and other third party claims of any type, whether accrued, absolute or contingent.

2.6 "Material Adverse Effect" shall mean any actual or potential cost or liability which would, individually or in the aggregate, materially and adversely affect financial conditions, results of operations, business interests or business prospects, as applicable.

2.7 "Related Technology" means all existing Technology of Assignor for HOC disclosed or claimed in the Patents and that relates to the development of the Technology or to the performance by the Technology of its intended functions or purposes, whether tangible or intangible, in any stage of development, including without limitation existing enhancements, derivative works, or continuations currently planned or in preparation, designs, improvements, inventions, works of authorship, trade secrets, formulas, processes, routines, subroutines, techniques, concepts, methods, ideas, research and lab notes, files, test data, research, specifications, concepts, work papers, and work product if any exists at the date hereof, all

documentation and all rights of any kind in or to any of the foregoing, including without limitation all proprietary rights and trade secrets.

2.8 The "Technology" shall mean all aspects of Assignor's intellectual property and know-how for HOC.

2.9 All other initially capitalized terms shall have the meanings assigned to them in this Assignment.

3. Assignor's Warranties. Except as qualified by the statements contained in the Disclosure Schedule attached hereto as Exhibit B, each of Assignor hereby jointly and severally represents, warrants, and covenants to Buyer that the statements contained below are true, correct and complete as of the date hereof, as follows:

3.1 Authority and Power. Each of Assignor which is not a natural person is legally and validly formed, organized and existing. Assignor has all necessary rights and powers to enter into and perform according to the terms and conditions of this Assignment. The transfer of the Patents by Assignor to Buyer pursuant to this Assignment is valid and enforceable. Any and all action on the part of Assignor necessary for the authorization, execution, delivery and performance of this Assignment and any other agreements contemplated hereby has been taken. This Assignment and any other agreements contemplated hereby, when executed and delivered by Assignor, will constitute valid and binding obligations of Assignor enforceable in accordance with their respective terms.

3.2 No Violation. The execution, delivery and performance of this Assignment and the consummation of the transactions contemplated by this Assignment will not (i) modify, breach or constitute grounds for the occurrence or declaration of a default under any material agreement by which the Patents may be bound or affected; (ii) result in the creation or imposition of (or the obligation to create or impose) any Lien on the Patents; or (iii) violate any law, regulation, order, judgment or decree of any court or governmental agency, except as to any violation which would not result in a Material Adverse Effect. Assignor is not subject to any order, writ, injunction, or decree of any court or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality, domestic or foreign in respect of the Patents.

3.3 No Third Party Agreements or Consents. Other than as explicitly stated in the Disclosure Schedule, (i) there are no contracts, agreements or understandings materially affecting the Patents, and (ii) no consent of any person not a party to this Assignment is required to be obtained on the part of Assignor to permit the consummation of the transactions contemplated by

this Assignment (including without limitation the transfer to Buyer of all right, title and interest in and to the Patents). Except as specifically provided herein, Buyer shall not by virtue of any contractual arrangement between Assignor and any third party be obligated to provide to any such third party any copies of the patents, or any modifications, enhancements or upgrades thereto or derivative works thereof or any other right or thing of value.

3.4 No Litigation, etc. Other than as explicitly stated in the Disclosure Schedule, there is no litigation, arbitration or other proceeding (formal or informal) pending or, to the Knowledge of Assignor, threatened against or affecting Assignor or the Patents, the result of which could have a Material Adverse Effect on the Patents or Buyer's ability to freely license, use, market and distribute the Patents; nor does Assignor Know or have reason to Know of any basis for the same. To the Knowledge of Assignor, there is no investigation (formal or informal), pending or threatened against or affecting the Patents.

3.5 No Broker's Fees. Assignor has not incurred, and will not incur, directly or indirectly, as a result of any action taken by it, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Assignment that may be imposed against Buyer.

3.6 Title. Assignor has complete, good and marketable title (or rightful possession and ownership, as the case may be with respect to know-how and trade secrets) to all of the Patents and the Related Technology which are disclosed or claimed in the Patents (the "Original Assets"), and the Patents are transferred to Buyer free and clear of any interests of other parties, Liens or restrictions on or conditions to transfer or assignment.

3.7 Technology. To the Knowledge of Assignor, the Original Assets (except for the Related Technology which is disclosed in the Patents) have not been published in such a manner that any material part thereof has entered the public domain. The Original Assets are not the subject of any pending or threatened claim for breach of warranty or product liability Known to Assignor. Any proprietary information relating to the Original Assets has been treated as proprietary and confidential by Assignor. No party other than Assignor, the U.S. Patent and Trademark Office, certain foreign patent and trademark offices, and the BSML Group possesses any copy of all or part of the technical specifications for the Related Technology (except for the Related Technology which is disclosed in the Patents) which is disclosed or claimed in the Patents.

3.8 Compliance with Laws. Assignor is in compliance with all statutes, laws, rules and regulations with respect to or affecting the ownership and use of the Patents except as to any failure of compliance which would not result in a Material Adverse Effect.

3.9 No Fraudulent Conveyance. After due inquiry and negotiation, the sale and purchase of the Patents is made in exchange for fair and equivalent consideration, and Assignor is not now insolvent and will not be rendered insolvent by the sale of the Patents under the terms of this Assignment. The transactions contemplated by this Assignment will not constitute a fraudulent conveyance or any act with similar potential consequences, or otherwise give any creditor of Assignor rights to any of the Patents.

3.10 Noninfringement, etc. The Original Assets (i) are original works of Assignor and, to the best of Assignor's Knowledge, do not violate any copyright, trade secret, trademark, Patent or other proprietary right of any third party; (ii) were not created from nor will they, to the best of Assignor's Knowledge, incorporate at the date hereof any legally protected third party intellectual property that would prevent the Buyer from exercising its rights in the Original Assets; except as has been disclosed in writing to Buyer in the Disclosure Schedule, and (iii) are not as of the Effective Date subject to any third party royalty or other material obligations. Other than Assignor, all persons developing or creating any part of the Original Assets either were acting as employees of Assignor or have executed agreements adequate to assign any interest they may have in their creation to Assignor. There are no existing, pending or, to Assignor's Knowledge, threatened, claims of infringement, misappropriation or disputed ownership by any third party relating to the Original Assets, and, to the Knowledge of Assignor, there is no basis for any such claim.

3.11 Taxes and Audits. To the extent that a failure to do so would result in a Material Adverse Effect to Buyer or the Patents, (i) Assignor has timely filed all federal, state and other returns and reports ("Returns") relating to taxes or other governmental charges, obligations, filings or fees, including without limitation income, business, sales or use, employment, withholding and secondary or transferee liability for taxes and any related interest or penalties ("Taxes"); (ii) Assignor's Returns are true and correct and were completed in accordance with applicable laws; (iii) Assignor has paid all Taxes, if any, due and payable in connection with Assignor's business and its use and ownership of the Patents; (iv) Assignor has withheld all required amounts and paid such amounts to the appropriate governmental authority; and (v) there are no current Liens for Taxes and no pending or threatened audits, examinations, assessments, asserted deficiencies or claims for Taxes.

3.12 Confidential Information and Invention Assignment Agreements. Other than as explicitly stated in the Disclosure Statement, to the Knowledge of Assignor with respect to the Original Assets, no current or former employee, consultant or officer of Assignor or any of its predecessors (i) is in violation of an agreement with Assignor regarding confidentiality and

proprietary information nor (ii) excluded works or inventions made prior to his or her employment from the scope of such agreements, such that said actions by any former employee, consultant or officer would have a Material Adverse Effect.

3.13 Patent Maintenance. Other than as explicitly stated in the Disclosure Schedule, to Assignor's best Knowledge, no act has been done or omitted to be done by Assignor, or any licensee thereof, which has had or could have the effect of impairing or dedicating to the public, or entitling any U.S. or foreign governmental authority or any other person to cancel, forfeit, modify or consider abandoned, any Patents, or give any person any rights with respect thereto. Other than as explicitly stated in the Disclosure Schedule, to the best of its Knowledge, Assignor's Patents are valid, enforceable and free of defects and Assignor has no Knowledge of any facts or claims which would cause any Patent to be invalid or unenforceable, nor has it received any notice that any person or entity may bring such a claim or a claim of interference or opposition. Notwithstanding the foregoing, any action that would constitute an abandonment of an issued U.S. Patent has not and will not have a Material Adverse Effect with respect to the Patents.

4. Indemnification.

(a) Duty to Indemnify. Assignor agrees to indemnify and hold Buyer and its Affiliates, successors and assigns harmless from all claims, losses, liabilities, damages, deficiencies, costs, penalties, interest and expenses, including reasonable attorneys' fees and expenses of investigation (each a "Loss") incurred by Buyer or any of its Affiliates, successors and assigns relating to or resulting from (i) any material breach of a representation or breach of any warranty of Assignor, or failure by Assignor to perform or comply with any covenant that is contained herein or in any exhibit or other document delivered in connection with this Assignment by Assignor or its representatives; (ii) any claim or action by any third party which is or was in privity with any of Assignor questioning the validity of, claiming any interest in or seeking to rescind Assignor's transfer of any Patents to Buyer; (iii) any liabilities, obligations or commitments of, or claims against, Assignor, or against or involving any of the Patents arising out of any act or omission of Assignor prior to the date hereof; or (iv) any successful claim of infringement of any third party patent, copyright or other personal or proprietary right relating to the Patents in the form commercialized as of the date hereof. As used in the preceding sentence, a successful claim of infringement is a final and unappealable decision of a U.S. federal court holding that such Patent or Related Technology in the form commercialized as of the date hereof infringed such third party patent, copyright or other personal or proprietary right that such third

party patent, copyright or other personal proprietary right is valid and enforceable. It is understood and agreed that any product, material, method, equipment or the like that incorporates or embodies any of the Related Technology is not "in the form of commercialized as of the date hereof" if (x) it further includes or is used in combination with other technology, provided that the infringement involves the combination or the other technology, or (y) is a particular embodiment of a product, material, method, equipment or the like (as the case may be) not specifically disclosed in the Related Technology.

In no event shall Assignor be liable for, or subject to indemnification obligations for, any Loss to the extent it arises out of modifications, extensions or other changes to the Patents or Related Technology made by the Buyer or to extent it arises out of applications of the Patents or Related Technology in areas outside of the HOC field of use.

(b) Limitation on Indemnification. Notwithstanding anything to the contrary contained in this Section 4, the obligations of Assignor to provide indemnification pursuant to Section 4 shall not arise unless and until the amount of Losses exceeds \$25,000 (the "Basket Amount") in the aggregate, whereupon the Buyer shall be entitled to receive indemnity payments in the aggregate amount by which all such Losses exceed the Basket Amount.

5. Confidentiality. Assignor acknowledges that, after the date hereof, the Original Assets will constitute proprietary and confidential information of Buyer ("Confidential Information"), and agrees that it will not use or disclose such Confidential Information to any third party without the prior written consent of Buyer; provided, however, that the foregoing restriction shall not apply to any portion of the Confidential Information which (i) is or becomes generally available to the public in any manner or through no fault of Assignor or its employees, agents or representatives, or (ii) is released for disclosure with Buyer's prior written consent, or (iii) is required by a court or a governmental agency to be disclosed or is otherwise required by law, or is necessary in order to establish rights under this Assignment; provided, that, with respect to clause (iii) above, Assignor shall first notify Buyer of such required disclosure and shall take such steps as Buyer shall reasonably request to limit the scope of such disclosure and otherwise protect the confidentiality of the Confidential Information. Subject to the disclosure requirements applicable to the parties with respect to existing agreements and/or in connection with legal proceedings, the terms and conditions of this Assignment shall be considered confidential and shall not be disclosed (except to each party's attorneys and accountants on a need-to-know basis) without the prior written consent of the other parties, except to the extent reasonably necessary for purposes of this Assignment or in order to fulfill obligations under this Assignment. It is

understood and agreed that any disclosure or use of any Confidential Information in violation of this Section 4 would cause Buyer irreparable harm, for which monetary damages would not be an adequate remedy and that Buyer shall be entitled to specific performance and injunctive relief, in addition to other remedies available at law.

6. Other Matters

6.1 Assignor hereby authorizes and requests the United States Commissioner of Patents and Trademarks, and such patent office officials in foreign countries as are duly authorized by their patent laws, to issue any and all patents on the inventions which are disclosed or claimed in the Patents (the "Inventions") to Buyer as the owner of the entire interest, for the sole use and benefit of Buyer, its successors, assigns and legal representatives.

6.2 Assignor hereby agrees, without further consideration and without expense to it, to sign all lawful papers and to perform all other lawful acts which Buyer may request to make this assignment fully effective, including, by way of example but not of limitation, the following:

- (a) Prompt execution of all original, continuation divisional, continuation-in-part, substitute, reissue, re-examination and other United States and foreign patent applications on said Inventions, and all lawful documents requested by Buyer to further the prosecution of any of such patent applications; and
- (b) Cooperation to the best of its ability in the execution of all lawful documents, the production of evidence, nullification, reissue, extension, interference or infringement proceedings involving said Inventions.

6.3 Future License to OIP in the Permitted Field. At any time following the Closing a member of the Assignor may bring to the attention of Buyer, by written notice, an opportunity to commercially exploit any of the Patents, either alone or in combination with other technology, in the non-HOC field ("Permitted Field"). If Buyer either expressly declines to license the subject Patents for such commercial exploitation or fails to do so within a reasonable time period (such time period in any event not to exceed ninety (90) days after the date of Buyer's receipt of the written notice unless agreed otherwise by Buyer and the Assignor member at that time), then the Assignor member in question shall be entitled to an immediate and automatic royalty free grant of rights and license under the subject Patents sufficient for such commercial exploitation in the Permitted Field. The Assignor shall have the right, but not the obligation, to take legal action with respect to any infringement of Patents in the Permitted Field, at its own expense. If the Assignor chooses to take such action, all costs associated with any such action, including those of

defending Buyer if named as a party in such action, shall be borne by the Assignor. Buyer shall cooperate (not including any financial obligation on the part of Buyer) with the Assignor as it shall reasonably request, including consenting to being named as a party in any dispute relating to infringement in the Permitted Field.

7. Breach of Agreement; Remedies. If any party to this Assignment believes another party has materially breached any provision of this Assignment, the party alleging the breach shall deliver notice to the other party, specifying the nature of the alleged breach. The party alleged to be in breach shall have sixty (60) days from the date of mailing of such notice in which to attempt to cure the alleged breach. During such sixty (60) day period, any party may request a personal meeting between the parties in which to negotiate in good faith to attempt to resolve the dispute. If such negotiations are unsuccessful and the alleged breach has not been cured by the end of such sixty (60) day period, the party alleging the breach may pursue any and all rights and remedies that it has under this Assignment, at law or in equity, in any judicial or arbitration proceedings.

8. Miscellaneous.

8.1 Expenses. Except as specifically provided herein, each party shall bear its own legal fees and other expenses incurred by it in connection with the negotiation of this Assignment and the carrying out of the transaction contemplated hereby.

8.2 Additional Actions and Documents. Each party agrees to perform such additional acts and to execute such additional documents as are reasonably necessary to carry out the transactions contemplated by this Assignment and to assist Buyer to obtain, perfect and protect its interest in the Patents.

8.3 Entire Agreement; Amendment; Waiver. This Assignment, together with the Exhibits hereto, and the additional documents required to be delivered in connection herewith, constitutes the complete agreement between the parties and supersedes all previous representations, written or oral, with respect to the Patents or other subject matter of this Assignment. Except as otherwise expressly provided herein, this Assignment may be modified or amended only by a writing signed by duly authorized representatives of all parties. The waiver by any party of any default or breach of this Assignment, or any obligation hereunder, shall be ineffective unless in writing, and shall not constitute a waiver of any subsequent breach or default. No failure to exercise any right or power under this Assignment or to insist on strict compliance by another party shall constitute a waiver of the right in the future to exercise such right or power or to insist on strict compliance.

8.4 Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the state of Delaware, without regard to any law regarding conflicts of laws. The parties consent to the jurisdiction and venue of Delaware state and federal courts in any action arising out of this Assignment. In any legal action arising out of this Assignment, the prevailing party shall be entitled to an award of its costs and reasonable attorneys' fees.

8.5 Cumulative Remedies. All rights and remedies provided in this Assignment, at law or in equity are cumulative.

8.6 Severability. If any term of this Assignment is held invalid or unenforceable by a court or arbitrator of competent jurisdiction, such terms shall be reduced or otherwise modified by such court or arbitrator to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it shall be severed and the remaining terms of this Assignment shall be interpreted in such a way as to give maximum validity and enforceability to this Assignment.

8.7 Binding Effect; Assignment. This Assignment is binding upon the parties and their respective successors, representatives and assigns.

8.8 Force Majeure. No party shall be liable for any failure or delay in performing hereunder, if such failure or delay is due to war, strike, government requirements, acts of nature, acts or omissions of carriers, or other cause(s) beyond its reasonable control.


8.9 Counterparts. This Assignment may be executed in counterparts, and all counterparts shall be deemed to be one and the same agreement.

8.10 No Agency. The parties are independent contractors, and this Assignment shall not be construed to create any agency or partnership between them. No party has authority to bind the other, to incur any liability or act on behalf of the other, or to direct the other's employees.

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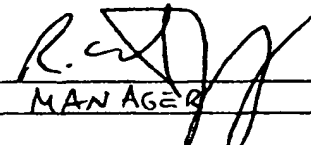
Signature Page Follows.]

IN WITNESS WHEREOF Assignor has hereunto set its hand:

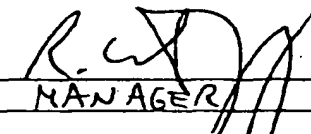


R. Eric Montgomery, an individual

**ORACEUTICAL INNOVATIVE
PROPERTIES, LLC**, a Delaware limited
liability company

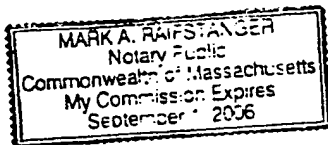
By: 
Title: MANAGER

ORACEUTICAL LLC, a Delaware limited
liability company

By: 
Title: MANAGER

STATE OF Massachusetts)
)
COUNTY OF Berkshire)

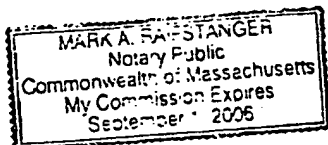
On this 23rd day of July, 2003, personally appeared before me R. Eric Montgomery, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to on this Assignment, and acknowledged that he executed the same.



[Signature]
NOTARY PUBLIC, Residing at:
Shelfield, MA

STATE OF Massachusetts)
)
COUNTY OF Berkshire)

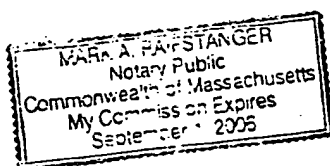
On this 23rd day of July, 2003, personally appeared before me R. Eric Montgomery, the Manager of Oraceutical Innovative Properties, LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to on this Assignment, and acknowledged that he executed the same for and on behalf of Oraceutical Innovative Properties, LLC.



[Signature]
NOTARY PUBLIC, Residing at:
Shelfield, MA

STATE OF Massachusetts)
)
COUNTY OF Berkshire)

On this 23rd day of July, 2003, personally appeared before me R. Eric Montgomery, the Manager of Oraceutical LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to on this Assignment, and acknowledged that he executed the same for and on behalf of Oraceutical LLC.



[Signature]
NOTARY PUBLIC, Residing at:
Shelfield, MA

EXHIBIT A

OAC IP Description

Patent/Publication No.	Application No.	Filed	Title
	60/004,258	9/25/96	Tooth Bleaching Compositions
U.S. 5,922,307	08/719,569	09/25/96	Tooth Bleaching Compositions
	09/022,656 Abandoned	02/12/98	Tooth Bleaching Compositions
U.S. 6,312,670	09/054,156	04/02/98	Tooth Bleaching Compositions
U.S. 6,331,292	09/192,609	11/16/98	Tooth Bleaching Compositions
U.S. 6,322,773	09/374,172	8/13/99	Tooth Bleaching Compositions
U.S. 6,488,914	10/003,210	10/31/01	Tooth Bleaching Compositions
U.S. 6,514,543	10/004,048	10/31/01	Tooth Bleaching Compositions
U.S. 6,536,628	10/000,658	10/31/01	Tooth Bleaching Compositions
US 20020141951A1	10/039,935	11/01/01	Tooth Bleaching Compositions
US 20020131937A1	10/050,196	01/17/02	Methods of whitening teeth
US 20030089886	10/219,965	08/15/02	Tooth Bleaching Compositions
WO 97/11676 A1	PCT/96US/15366	09/25/96	Tooth Bleaching Compositions
EP 0862408B	EP 96 933896.1	09/25/96	Tooth Bleaching Compositions

Patent/Publication No.	Application No.	Filed	Title
EP 1314419	EP2003 03003653	02/19/03	Tooth Bleaching Compositions
DE 69626297CO	DE1996069626297	09/25/96	Tooth Bleaching Compositions
AT 0232715E	AT1996000933896	09/25/96	Tooth Bleaching Compositions
CA 2238764 AA	CA 1996002238764	09/25/96	Tooth Bleaching Compositions
AU 7245596 A1	AU 72455/96	09/25/96	Tooth Bleaching Compositions
	AU 23234/01	5/14/98	Tooth Bleaching Compositions
	60/007,452		Compositions and Methods for Removing Tooth Stains
	60/031,339	11/21/96	Compositions and Methods for Removing Tooth Stains
	08/974,740	11/19/97	Compositions and Methods for Removing Tooth Stains
U.S. 6,475,469	09/395,838	09/14/95	Compositions and Methods for Removing Tooth Stains
	60/022,384	07/29/96	Chlorine Dioxide Tooth Whitening Compositions
U.S. 5,944,528	08/901,261	07/28/97	Chlorine Dioxide Tooth Whitening Compositions
U.S. 6,479,037	09/385,296	08/30/99	Chlorine Dioxide Tooth Whitening Compositions
WO 98/04235	PCT/97US/13467	07/28/97	Chlorine Dioxide Tooth Whitening Compositions
CN 1230107	CI 97 1 97855.7	07/28/97	Chlorine Dioxide Tooth Whitening Compositions
BR 9710779	BR PI 9710779-4	07/28/97	Chlorine Dioxide Tooth Whitening Compositions

Patent/Publication No.	Application No.	Filed	Title
			Whitening Compositions
CA 2261741		07/28/97	Chlorine Dioxide Tooth Whitening Compositions
EP0917455	EP 97937070.7	07/28/97	Chlorine Dioxide Tooth Whitening Compositions
JP 0516221T2	JP 10-509145	07/28/97	Chlorine Dioxide Tooth Whitening Compositions
TR 9900192	TR 99/192	07/28/97	Chlorine Dioxide Tooth Whitening Compositions
	South Africa Abandoned?	07/28/97	Chlorine Dioxide Tooth Whitening Compositions
D387,166	29/054,262	5/10/96	Dental Tray
U.S. 5,816,802	08/533,148	09/25/95	Flexible Dental Tray

**CERTIFICATE OF MERGER****OF**

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:00 PM 12/31/2003
FILED 09:00 PM 12/31/2003
SRV 040001011 - 3637596 FILE

BRITESMILE DEVELOPMENT, INC.**A DELAWARE CORPORATION****(SURVIVING CORPORATION)****AND****ORACEUTICAL ACQUISITION LLC****A DELAWARE LIMITED LIABILITY COMPANY****(MERGING AND NONSURVIVING ENTITY)**

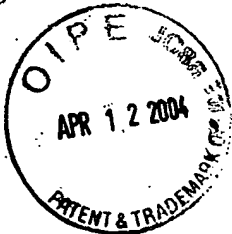
In accordance with Section 18-209 of the Delaware Limited Liability Company Act and Section 251 of the Delaware General Corporation Law and pursuant to that certain Agreement and Agreement of Merger (the "Agreement of Merger") dated as of November 21, 2003, by and between BriteSmile Development, Inc., a Delaware corporation ("BDI") and Oraceutical Acquisition LLC, a Delaware limited liability company ("OAC"), which has been approved, adopted, certified, executed and acknowledged in accordance with Section 251 of the Delaware General Corporation Law, BDI, as the surviving corporation, declares and certifies as follows:

ARTICLE I**Surviving Corporation**

The surviving corporation shall be **BRITESMILE DEVELOPMENT, INC.**, a Delaware corporation.

ARTICLE II**Nonsurviving Entity**

The nonsurviving entity is **ORACEUTICAL ACQUISITION LLC**, a Delaware limited liability company.



ARTICLE III Agreement of Merger

The Agreement of Merger is attached to this Certificate of Merger as Exhibit "A" and is incorporated into and made a part of this Certificate of Merger by this reference.

ARTICLE IV Shareholder and Member Approval of the Agreement of Merger

The holders of the common stock and preferred stock of BDI, and the holders of the equity interests of OAC, were required to approve the Agreement of Merger. No shareholders or members of BDI or OAC were entitled to vote in separate voting groups. The designation and number of outstanding shares, the number of votes entitled to be cast, and the total number of votes cast for and against the Agreement of Merger were as follows:

Outstanding Equity	Votes Entitled To Be Cast	Votes Cast For	Votes Cast Against
BDI Common Stock	100,000	100,000	0
OAC Membership Interests	100	100	0

The number of votes cast for the Agreement of Merger was sufficient for approval by both entities.

ARTICLE V Entire Agreement of Merger

The Agreement of Merger attached hereto is the entire Agreement of Merger. The Agreement of Merger will be kept on file at the offices of BDI at 490 N. Wiget Lane, Walnut Creek, California 94598. The surviving corporation shall provide a copy of the entire Agreement of Merger to any owner of any of the entities which are parties to the Merger upon request and free of cost.

ARTICLE VI Certificate of Incorporation

The Certificate of Incorporation of BDI as in effect prior to the Merger shall be

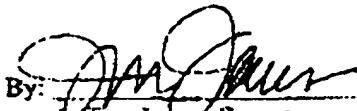
the Certificate of Incorporation of the surviving corporation. No amendments to the Certificate of Incorporation of BDI are being effected in connection with this Certificate of Merger.

ARTICLE VII
Effective Date

This Certificate of Merger shall be effective upon filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being the Secretary of Britesmile Development, Inc., a Delaware corporation, certifies and verifies, under penalties of perjury, that the facts stated in this Certificate of Merger are true and executes and delivers this Certificate of Merger this 31st day of December 2003.

Britesmile Development, Inc.,
a Delaware corporation

By: 
Jeffrey Jones, Secretary